



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

PHI AIR MEDICAL

**Respondent Name**

PROTECTIVE INSURANCE COMPANY

**MFDR Tracking Number**

M4-17-0392-01

**Carrier's Austin Representative**

Box Number 17

**MFDR Date Received**

October 14, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "PHI's claim for these services were considered as a covered charge however undercompensated by \$34,721.45 without justifiable cause."

**Amount in Dispute:** \$34,721.45

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Respondent requests Medical Fee Dispute Resolution enter a Findings and Decision stating Requestor waived their right to dispute resolution as the request was not filed within one year of the date of service.."

**Response Submitted by:** Downs Stanford, PC

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 13, 2015	Air Ambulance Services	\$34,721.45	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. Labor Code §413.031 entitles a party to review of medical services provided when payment is denied or reduced.

## **Issues**

1. Does the Federal Aviation Act preempt the authority of the division to review the fee issues in dispute?
2. Did the requestor waive the right to medical fee dispute resolution?

## **Findings**

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee guidelines to air ambulance services. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.*, which held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that:

In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . .

The division agrees and concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act—or the Airline Deregulation Act of 1978—based on SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute.

The air ambulance services provider has requested medical fee dispute resolution in accordance with 28 Texas Administrative Code §133.307, pursuant to Labor Code §413.031(a)(1), which entitles a party to a review of medical services if a health care provider is "denied payment or paid a reduced amount for the medical service rendered." As the requestor has sought the administrative remedy outlined in Rule §133.307 for resolution of the medical fee dispute, the division concludes it has jurisdiction to review the fee issues and adjudicate payment in this dispute pursuant to the Texas Workers' Compensation Act and applicable division rules.

2. 28 Texas Administrative Code §133.307(c)(1) requires that:

A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

The date of the services in dispute is October 13, 2015. The request for medical fee dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) Section on October 14, 2016. This date is later than one year after the date of service in dispute. Review of the submitted documentation finds the disputed services do not involve issues identified in Rule §133.307(c)(1)(B). The division concludes the requestor has failed to timely file this dispute with the division's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

## **Conclusion**

In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment, given the relevant statutory provisions and division rules.

The Division would like to emphasize that the findings and decision in this dispute are based on the evidence presented by the requestor and respondent available at the time of review. Even though all the evidence was not discussed, it was considered.

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

## **ORDER**

Based on the information submitted by the parties, in accordance with the provisions of Texas Labor Code §413.031, the division determines the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### Authorized Signature

Signature	Grayson Richardson Medical Fee Dispute Resolution Officer	December 28, 2016 Date
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## **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**